

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 453 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJANIKANT R SATA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

Ms.Binoda Gajjar AGP for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 10/07/96

ORAL JUDGEMENT

Shri Rajnikant R. Sata has filed the present petition seeking to quash the order passed on 29.1.85 by the Collector of Electricity Duty, Government of Gujarat.

2. The petitioner Rajnikant Sata was initially

appointed as a clerk in the year 1972 in Industries, Mines and Power Department (hereinafter referred to as IMPD) of the respondent Government. There was a vacancy of Electricity Duty Inspector at Surat and therefore, the petitioner was asked to go from Rajkot to Surat on deputation on 2.12.1980. Accordingly, the petitioner joined his new posting. It is further claimed that as there was a clear vacancy of Electricity Duty Inspector at Surat, a Selection Committee was appointed in order to select a person in order to fill in the said vacancy. He participated in the said selection process and was selected by the Selection Committee and was appointed by the order dated 29.1.81 as Electricity Duty Inspector at Surat on probation for one year. Subsequently, said probation period was extended for one year by the order dated 31.12.1982 and ultimately, he was confirmed in the said post. But all of a sudden an order was passed on 29.1.1985 ordering that he was reverted to his parent office i.e. the Chief Electrical Inspector, Ahmedabad in his original post as clerk. The petitioner has therefore, come before this court to get a relief against the said order of posting by the Collector of Electricity Duty on 29.1.85 (Annexure.E to the petition).

3. It is the contention of the respondents that there were two separate establishments (1) establishment of Collector of Electricity Duty and (2) the office of the Chief Electrical Inspector. The petitioner was originally selected and appointed in the office of the Chief Electrical Inspector, Ahmedabad and he was not in the establishment of the Collector of Electricity Duty. It is further contended that there was no proper establishment of Selection Committee; that the Selection Committee was improperly constituted and the persons who participated in the said Committee were not eligible for participating in the same. Consequently the selection of the present petitioner is illegal and invalid. The Government has taken a decision to set aside the same and as he was originally belonging to the office of the Chief Electrical Inspector, the order was issued repatriating him to the said department. Thus it is contended that there is no infringement of any fundamental right of the petitioner and consequently, the present petition should be dismissed.

4. There is no dispute of the fact that present petitioner was initially selected as a clerk and was posted in the office of the Electrical Inspector, Rajkot. It is also an admitted fact that there was a vacancy of Electricity Duty Inspector at Surat in the year 1979-80. The pay scale of the post of clerk was Rs.130-240 which

was revised to Rs. 260-400; whereas the pay scale of Electricity Duty Inspector was Rs. 425-700. It is also an admitted fact that present petitioner was working continuously from 1980 till the date of the petition as Electricity Duty Inspector.

5. It is also not in dispute that the post of Electricity Duty Inspector at Surat was lying vacant and that the same was to be filled in. It is the case of the petitioner that in order to fill in the vacancy, a Selection Committee was appointed and he was selected by the Selection Committee. The petitioner has produced on record the office order dated 29.1.1981 signed by the Collector of Electricity Duty, Ahmedabad who is the head of both the establishments viz. Establishment of Collector of Electricity and Chief Electrical Inspector. In the said appointment order, it has been clearly mentioned that present petitioner was selected by the Selection Committee. Said appointment order runs as under:

OFFICE ORDER

Read 1.This office order No.105 dt 2.12.80

2.GAD Resolution No.FCA 1065-427-A

dt. 2.1.67

Shri R.R. Sata, B.Com. First Class, a qualified candidate who was selected by the Selection Committee of this organization on 2.12.1980 for being appointed as Duty Inspector, Surat on deputation from the office of the Electrical Inspectorate of this organization is now appointed on regular basis as a Duty Inspector on probation of one year at Surat with effect from 1.2.1981 subject to the following conditions.

1. He should give one month's notice or has to pay one months pay in view thereof if he desires to resign from the above post.
2. His services are transferable through out the State of Gujarat.

He has to pass Departmental examination or any other examinations prescribed by Govt. from time to time.

Electricity Duty IMP

Ahmedabad 14.

Dated 29.1.1981

Collector of Electricity

Duty, Ahmedabad.

Copy f.w.c.s. to

1. Under secretary to Govt. Industries, Mines and
Power Department, Sachivalaya, Gandhinagar,
for information please.

2. Pay and Accounts Officer, Ahmedabad for informa-
tion and necessary action.

Copy forwarded to Shri R.R. Sata, Duty Inspector
for information and necessary action.

Copy for office order file

Copy for personal file.

6. Now it is the contention of the learned Assistant Government Pleader for the respondents that there was no proper and valid establishment of the selection committee. If the pleadings of the respondents are read, then it would be clear that the respondents are raising inconsistent pleas. At one stage they say that there was no proper and valid Selection Committee as there was improper participation of one Mr. Pai who was then working in other establishment (Chief Electrical Inspector, Establishment) and at another stage they say that there was no formation of any Selection Committee. It is pertinent to note that neither in the reply affidavit nor by way of producing any document they have shown as under what Rules and in what manner the Selection Committee was to be formed. A vague allegation that the Selection Committee was not properly formed or established would not be sufficient. It is very pertinent to note that after issuing the above quoted appointment order, the period of probation of the present petitioner was extended by one year by way of subsequent order No. 83 dated 31.12.82. It is also very pertinent to note that the said appointment order as well as extension of probation period were addressed to the Under Secretary to Government, IMPD as well as Pay and Accounts Officer and the petitioner was continuously paid the pay of Electricity Duty Inspector from the date of his appointment till the order in question. It is contended in the reply that there was objection for the said selection of the present petitioner by the department but no such objection is produced on record. Therefore, in the circumstances, when the Selection Committee was established by the respondents themselves and when the respondents themselves have issued the orders in question and allowed the petitioner to function as Electricity Duty Inspector for 3 years and when it is not shown by

producing materials on record that said acts were on account of the bonafide mistake on the part of the respondent department, the contention of the respondent department that there was wrongful selection of the petitioner, could not be accepted. It must be remembered that the present petitioner was directly recruited to the post in question. Though the respondents are contending that there are two establishments, the head of both the establishment is one and the same person and there is nothing on record to show that they are in fact two separate section or departments having separate establishments with separate musters and accounts. When the petitioner was selected as a direct recruit, the order by which he was repatriated to his original department, is in fact amounts to reversion to his original post. It is pertinent to note that no speaking order has been issued by the respondents mentioning therein as under what circumstances, his appointment as Electricity Duty Inspector was quashed or set aside. It is also not mentioned in the order in question as to why his services as Electricity Duty Inspector are being terminated but he has been merely ordered to be repatriated to his parent department in his original post of clerk. That clearly amounts to his reversion to the lower post in view of the separate pay scales. In the case of Hussain Sasansaheb Kaladgi vs. State of Maharashtra reported in AIR 1987 SC 1627, the Supreme Court has held that the State Governments order of reverting direct recruit to the lower post is not tenable by laying the following principles:

" A direct recruit to a post cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted. The order of the State Government reverting the petitioner, a direct recruit to the post of Assistant Deputy Educational Inspector to the lower post of primary teacher was unsustainable."

7. Thus I hold that in view of the material on record and the facts of this case, the order in question could not be upheld and the order in question deserves to be quashed and therefore, I allow the present petition and order that the order issued by the respondent bearing no. 115 dated 29.1.1995 is hereby quashed and set aside and the petitioner is continued to work as Electrical Duty Inspector. In the circumstances of the case, the parties to bear their own costs. Rule made absolute.

(S.D.Pandit.J)